

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Peña	Team: Team # 1	CCRB Case #: 200412175	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/08/2004 4:21 AM	Location of Incident: [REDACTED] and the 73rd Precinct	Precinct: 73	18 Mo. SOL 6/8/2006	EO SOL 6/8/2006	
Date/Time CV Reported Wed, 12/08/2004 9:01 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 12/08/2004 9:01 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Keller	00923	903148	073 PCT
2. POM Jason Cuttler	08317	926732	073 PCT
3. POM Frank Cicerello	11513	926461	073 PCT
4. POM Shane Killilea	30946	927030	073 PCT
5. An officer			
6. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Robert Schierenbeck	07814	923130	ESS 07
2. POM Orlando Lamourt	05429	906604	073 PCT
3. POM Arnold Nickey	04112	906933	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Keller	Force: At § 87(2)(b), PO Michael Keller used physical force against § 87(2)(b)	[REDACTED]
B.POM Frank Cicerello	Force: At § 87(2)(b), PO Frank Cicerello used physical force against § 87(2)(b)	[REDACTED]
C.POM Jason Cuttler	Force: At § 87(2)(b), PO Jason Cuttler used physical force against § 87(2)(b)	[REDACTED]
D.POM Shane Killilea	Force: At § 87(2)(b), PO Shane Killilea used physical force against § 87(2)(b)	[REDACTED]
E. An officer	Abuse: At § 87(2)(b), an officer threatened § 87(2)(b) with the use of force.	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
F. An officer	Force: At § 87(2)(b), an officer used physical force against § 87(2)(b)	
G. An officer	Discourtesy: In front of § 87(2)(b), an officer spoke obscenely and/or rudely to § 87(2)(b)	
H. An officer	Discourtesy: At the 73rd Precinct, an officer spoke obscenely and/or rudely to § 87(2)(b)	
I. Officers	Force: At the 73rd Precinct, officers used physical force against § 87(2)(b)	
J. An officer	Abuse: At the 73rd Precinct, an officer strip-searched § 87(2)(b)	

### Synopsis

On December 8, 2004, at approximately 4:20am, § 87(2)(b) called 911 to report that his girlfriend, § 87(2)(b) was intoxicated and threatened to jump out of his apartment window. Officers Michael Keller and Frank Cicerello responded to the two-story location, along with two Emergency Medical Technicians, later identified as § 87(2)(b) and § 87(2)(b). § 87(2)(b) and § 87(2)(b) went to the front door on the first floor and told the officers that she had been joking and there was no need for assistance. § 87(2)(b) and § 87(2)(b) then went upstairs and the officers and technicians followed. Once inside the apartment, the officers and technicians requested to speak to § 87(2)(b) who headed straight for a back bedroom. When § 87(2)(b) exited the bedroom, she went with the technicians to the hallway. § 87(2)(b) followed behind when he was pulled outside of the apartment by the two officers. [Allegations A and B] Additional officers responded to the location and attempted to forcibly handcuff § 87(2)(b). [Allegation C and D] § 87(2)(b)'s mother, § 87(2)(b) and his friend, § 87(2)(b) who were inside the apartment, attempted to pull § 87(2)(b) back inside the apartment. An officer then threatened to "kill" § 87(2)(b). [Allegation E] Due to the struggle, § 87(2)(b) and PO Keller fell down the stairs. Upon seeing the fall, § 87(2)(b) allegedly fainted on the stairs three times. An officer allegedly picked her up by the hands and then threw her back onto the stairs. [Allegation F] § 87(2)(b) was placed in handcuffs and then escorted to a patrol car outside the residence. § 87(2)(b) alleged that her § 87(2)(b) year-old son, § 87(2)(b) who had also been in the apartment, requested the responding officers' names. An officer allegedly responded, "Mind your fucking business." [Allegation G]

§ 87(2)(b) was taken to the precinct and placed in the holding cells. ESU later responded and an officer allegedly told § 87(2)(b) "This is for you, bitch," while presenting § 87(2)(b) with the netting [Allegation H]. § 87(2)(b) was forcibly detained, [Allegation I], and transported to the hospital where he was evaluated. When he returned to the precinct, § 87(2)(b) was again placed inside a holding cell. An officer, who he described as a white stocky male, ordered § 87(2)(b) to remove his jeans. § 87(2)(b) complied and this officer pulled the waistband of his boxer's forward and exposed § 87(2)(b)'s genitals [Allegation J].

§ 87(2)(b), § 87(2)(g)

[REDACTED]

This case was originally assigned to Inv. Alona Katz and reassigned to Inv. Jessica Serrano on March 8, 2005.

### Summary of Complaint

#### **911 Communications**

The communications CD was obtained. § 87(2)(b) can be heard requesting an ambulance to respond to his address. He stated that a female was about to jump out of the window.

§ 87(2)(b) was treated at § 87(2)(b) on § 87(2)(b) (encl. 26a-d). His chief complaint on the patient face sheet was that he had an argument with his girlfriend. The triage report indicated that his chief complaint was that he had an argument with his girlfriend and called 911. Officers dragged him out and assaulted him.

§ 87(2)(b) is a § 87(2)(b)-year-old black male. He is 6 feet 4 inches tall and weighs approximately 180 pounds. Inv. Alona Katz interviewed him at the CCRB on January 7, 2005 (encl. 11a-d). His lawyer, § 87(2)(b), was also present during the interview.

On December 8, 2004 around 3:30am, § 87(2)(b) his girlfriend, § 87(2)(b) and his friend, § 87(2)(b) were at his house, located at § 87(2)(b) in Brooklyn. They had been drinking since 2:00am, and though § 87(2)(b) denied being intoxicated, he claimed § 87(2)(b) was drunk and sitting by the window threatening to jump. § 87(2)(b) called 911 and told the operator of the situation. Officers responded within minutes of the call.

Upon hearing the knock at the front door of the two-story apartment, § 87(2)(b) and § 87(2)(b) went downstairs. There were three male white uniformed officers standing by the front door. An officer that § 87(2)(b) identified as PO Keller, and was later identified as PO Michael Keller, asked § 87(2)(b) if he and § 87(2)(b) had been fighting. Both § 87(2)(b) and § 87(2)(b) responded that they were not fighting and § 87(2)(b) was joking around and had no intentions of jumping. § 87(2)(b) then went upstairs and § 87(2)(b) attempted to follow her when two officers walked in front of him and blocked his path. § 87(2)(b) could not recall the identity of these officers. The officers never spoke as § 87(2)(b) tried to get around them. § 87(2)(b) denied making any physical contact with them. § 87(2)(b) who saw that the officers were not allowing § 87(2)(b) upstairs, yelled out to § 87(2)(b) s mother, § 87(2)(b) who was upstairs in the living room. § 87(2)(b) came to the top of the staircase and asked what was happening. When the officers turned towards her, § 87(2)(b) was able to proceed upstairs by walking between the officers. The officers did not stop § 87(2)(b) but told him that they still wanted to talk to § 87(2)(b), so § 87(2)(b) invited them upstairs and let them inside.

Once upstairs, § 87(2)(b) headed straight to a back bedroom. The officers entered the apartment along with two EMTs who had just arrived on the scene, later identified as § 87(2)(b) and § 87(2)(b). The officers requested to speak to § 87(2)(b) who had been in § 87(2)(b) s room, and she went to the living room to speak to them. § 87(2)(b) could hear the officers asking if she was okay, and she responded that she was. The officers then requested that she accompany them to the hallway. § 87(2)(b) agreed and proceeded to exit the apartment with the police and the EMTs. § 87(2)(b) followed behind. As § 87(2)(b) reached the door, an officer approached him on his left side and used two hands to grab his throat. Both officers attempted to handcuff him, but only managed to handcuff one wrist. § 87(2)(b) and § 87(2)(b) then attempted to pull § 87(2)(b) back and yelled, “Why are you doing this to him? What did he do?” § 87(2)(b) then opened the back door of the apartment and attempted to pull § 87(2)(b) inside. § 87(2)(b) heard an officer threaten to kill § 87(2)(b) but could not identify who made the threat. § 87(2)(b) denied striking the officers and resisting arrest. Both technicians also attempted to grab and pull § 87(2)(b). The officers managed to pull § 87(2)(b) out of the apartment towards the staircase. Approximately four uniformed officers responded to the scene. § 87(2)(b) felt an arm around his throat and officers “beating” him on the head and ribs. He claimed that his eyes became bloodshot and therefore he could not identify or describe which officers participated. § 87(2)(b) was bent over forward as an officer pulled back his left arm, which had been handcuffed. § 87(2)(b) who stated he had visible scars on his back from a previous injury, claimed that the officers hit him on the scarred area. An officer, later identified through the investigation as PO Keller, pulled § 87(2)(b) s left arm in front of him (the one that had been handcuffed) and pulled him down the stairs by the arm. The rest of the officers followed behind them. At the bottom of the staircase, the officers had § 87(2)(b) down on the floor face first. PO Keller put his knee on the back of § 87(2)(b) s head and handcuffed him. The officers then took § 87(2)(b) to a patrol car and transferred him to the precinct.

At the precinct, he was placed inside of a holding cell, handcuffed by the wrists and feet. After approximately fifteen minutes, another uniformed male officer entered the cell holding a mesh netting with straps. This officer had not been at the original scene. No other officers or prisoners were present at this time and § 87(2)(b) denied acting boisterous and causing alarm. § 87(2)(b) asked the officer what the netting was for and the officer responded, “This is for you, bitch.” § 87(2)(b) told the officer that there was no need for the net and the officer told him, “Tell that to someone who cares.” The officer then entered the cell and tossed § 87(2)(b) to the floor, face first, which § 87(2)(b) claimed caused the bruise to his temples. § 87(2)(b) was wrapped in the bag, put on a stretcher, and taken to § 87(2)(b) by

another set of EMTs. § 87(2)(b) later came to the hospital and brought him some clothes, which consisted of jeans, sneakers, shirt, and a coat.

§ 87(2)(b) was then taken back to the precinct by a female officer, handcuffed and left in the holding cell. He was only handcuffed by one hand and denied that the handcuff was attached to anything. An officer, who was not at the original scene, entered § 87(2)(b)'s cell. § 87(2)(b) described him as a white, stocky, uniformed male. § 87(2)(b) could not recall his hair color or remember any more descriptive details. This officer entered all his pockets and then ordered him to take off his clothes. § 87(2)(b) took off his belt and dropped his pants. The officer patted § 87(2)(b)'s bare legs. He then pulled forward the waistband of § 87(2)(b)'s boxers and looked at his genitals. He ordered § 87(2)(b) to take off his shirt and § 87(2)(b) complied. § 87(2)(b) then dressed himself.

### Results of Investigation

#### **Complaint Report**

On December 8, 2004, at approximately 6:00am, § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) went to the 73<sup>rd</sup> Precinct to file a complaint against officers (encl. 9a-c). § 87(2)(b) identified PO Michael Keller, Sgt. Michael Raimo, PO Jason Cuttler, PO Frank Cicerello, Det. Jack Herzlinger, PO John Iles and "PO Magete." She indicated that two police officers and two emergency medical technicians arrived at her apartment to speak to § 87(2)(b). They all went upstairs towards § 87(2)(b)'s bedroom door. They asked to speak to § 87(2)(b) who said that nothing happened to her.

§ 87(2)(b) is a § 87(2)(b)-year-old black female. She was interviewed at the CCRB on January 7, 2005 (encl. 12a-d). § 87(2)(b)'s lawyer, § 87(2)(b), was also present during the interview. § 87(2)(b) is § 87(2)(b)'s mother. § 87(2)(b), § 87(2)(g)

On December 8, 2004 around 3:30am, § 87(2)(b) was in her home at § 87(2)(b). Her son, § 87(2)(b) called 911 after his girlfriend, § 87(2)(b) threatened to jump out the window. § 87(2)(b) did not witness § 87(2)(b) say this – her son had later informed her of the situation. When the police arrived, § 87(2)(b) and § 87(2)(b) went downstairs to talk to them. § 87(2)(b) later went downstairs and saw two officers, whom she identified as PO Keller and PO Cuttler, as well as two EMTs. § 87(2)(b) told the officers that § 87(2)(b) was all right and they could leave but PO Keller persisted and said he wanted to question § 87(2)(b). Everyone then went upstairs and § 87(2)(b) and § 87(2)(b) headed directly into the bedroom. At no point did any officers prevent § 87(2)(b) from going upstairs. The officers again asked to speak to § 87(2)(b) and she spoke to them in the hallway. § 87(2)(b) followed behind and was approached by PO Keller, who was the only officer standing by the door and had yet to exit the apartment. PO Keller used his flashlight to pull § 87(2)(b) out of the apartment by putting it around § 87(2)(b)'s neck. § 87(2)(b) could not see if PO Keller's arm or flashlight was against § 87(2)(b)'s throat. § 87(2)(b) grabbed § 87(2)(b) around his waist and tried to pull him back into the apartment. She asked, "Why are you pulling him out?" but PO Keller didn't answer and just kept pulling. § 87(2)(b) who had been in the living room, also tried to pull § 87(2)(b) back into the apartment by holding onto his boxer shorts. At one point, § 87(2)(b) opened the back door to try and pull § 87(2)(b) through but PO Cuttler told him, "I will kill you."

The two EMTs helped PO Keller pull § 87(2)(b) out into the hallway. § 87(2)(b) heard PO Cuttler call for assistance over the radio and the responding officers arrived and came upstairs. The officers then began to beat § 87(2)(b) by punching him. § 87(2)(b) began to cry and stated that it was only three weeks since § 87(2)(b)'s surgery for a collapsed lung. The officers had § 87(2)(b) in a headlock and had raised his left arm straight up and back, exposing his past surgical scars. The officers punched him in the exposed side area. § 87(2)(b) was still not handcuffed and used his right arm to brace himself against the wall. Though § 87(2)(b) was not able to distinguish between the backup officers, she did recall that PO Cuttler was the officer who had taken § 87(2)(b) from PO Keller in the hallway and put him in a headlock. She was also able to recall that PO Keller participated in punching § 87(2)(b) on his side area. When § 87(2)(b) saw an officer with a taser in his hands, she fainted and fell down. When she

got up, she observed that the officers had handcuffed § 87(2)(b) and began pulling him down the stairs by his head. They were on about the third step from the top and began to drag him on his stomach. There were two officers, on either side of § 87(2)(b) and they were each holding onto his shoulder area to drag him down. She did not see which officers were doing this because as soon as she saw § 87(2)(b) being dragged, she fainted again and wound up rolling down the stairs. When she got to the bottom, she caught herself. She observed § 87(2)(b) lying on the floor on his side in an “S” position. His hands were behind his back, his head against the wall, and his feet bent back. § 87(2)(b) fainted a third time and fell on top of § 87(2)(b). One of the officers picked her up by her hands and threw her back onto the staircase. She had regained consciousness at this point.

§ 87(2)(b) was pulled out of the building and put into a patrol car. § 87(2)(b) and her § 87(2)(b) - years-old son, § 87(2)(b) went outside. § 87(2)(b) questioned where the officers were taking § 87(2)(b) and one of the officers (male, white, short, stout) told him to “Mind your fucking business.” § 87(2)(b) replied, “His business is my business because he’s my brother.” Her younger son observed the whole incident.

### Emergency Medical Technicians

§ 87(2)(b) was interviewed by the CCRB on June 20, 2005 (encl. 13a-c). On the date of the incident, § 87(2)(b) worked for § 87(2)(b) as an EMT. § 87(2)(b).

On December 8, 2004, at approximately 4:20am, § 87(2)(b) and his partner, § 87(2)(b) responded to a call of a jumper at § 87(2)(b) in Brooklyn. § 87(2)(b) and his partner arrived along with a police unit, which consisted of PO Keller and PO Cicerello. As they pulled up to the location, an ESU truck was leaving the scene. § 87(2)(b) assumed that it was a non-emergency, but was still required to ask the alleged jumper, § 87(2)(b) if she really intended to jump. When they arrived at the door, the officers informed the technicians that there was no jumper and that it was just an agitated girlfriend who wanted to leave her boyfriend’s apartment. The boyfriend, § 87(2)(b) would not allow § 87(2)(b) to leave the apartment, so she threatened to jump out of the window to go home, hence § 87(2)(b) called 911. § 87(2)(b) who appeared to have been drinking a few beers beforehand and had a beer in his hand while speaking to the officers and technicians at the front door, refused to allow anyone to speak to § 87(2)(b). § 87(2)(b) believed that § 87(2)(b) was intoxicated since he was very agitated, irrational and repeatedly told § 87(2)(b) to go upstairs. § 87(2)(b) finally went upstairs and § 87(2)(b) followed behind her. The technicians and the officers followed after § 87(2)(b). At no point did any officers block § 87(2)(b) s path from heading upstairs.

§ 87(2)(b) went inside a back room and § 87(2)(b) shut the door behind her, not allowing anyone inside. The technicians entered the apartment and continued to ask § 87(2)(b) if she was okay. There was another male in the apartment, identified by this investigation as § 87(2)(b) and a young boy, identified as § 87(2)(b). After approximately three minutes, § 87(2)(b) finally exited the room and the technicians took her out into the hallway to speak to her. § 87(2)(b) became upset that § 87(2)(b) left the apartment and had to be pulled so he would not interfere with the technicians. § 87(2)(b) said that she was fine and did not wish to go to the hospital. Since § 87(2)(b) had no physical injuries, the technicians agreed that medical attention was unnecessary and began to pack up when § 87(2)(b) “rushed” out of the apartment yelling. Both officers ran after § 87(2)(b) and attempted to handcuff him. The officers radioed for additional units to respond after they had § 87(2)(b) on the floor. Another individual, later identified as § 87(2)(b) and § 87(2)(b) s mother, § 87(2)(b) came out of the apartment. Both technicians attempted to push them back inside the apartment as they attempted to interfere with § 87(2)(b) s arrest. There was a very big struggle with the technicians and the family members and § 87(2)(b) and the officers who were fifteen feet away. § 87(2)(b) never saw how they fell down the stairs, but he heard them fall. § 87(2)(b) and his partner pushed off of § 87(2)(b) and § 87(2)(b) and ran down the stairs to help PO Keller and § 87(2)(b). At this time additional units responded to the location. § 87(2)(b) was handcuffed and escorted from the building. Outside, § 87(2)(b) began requesting all of the officer’s badge numbers.

§ 87(2)(b) stated that § 87(2)(b)'s pants were very loose and may have fallen off during the struggle. § 87(2)(b) did not see any officers hit him in the head at any point. He did see the officers attempt to handcuff § 87(2)(b) at the top of the stairs and also saw only one handcuff on § 87(2)(b) at the bottom of the stairs. ESU responded again to the location but they never entered the building. § 87(2)(b) denied that any officers yelled that § 87(2)(b) would be tasered. He also stated that § 87(2)(b) never fainted. § 87(2)(b) and his partner transported PO Keller to the hospital for a knee injury.

§ 87(2)(b) was interviewed by the CCRB on June 27, 2005 (encl. 14a-c). § 87(2)(b) is a § 87(2)(b) year old EMT for the FDNY. § 87(2)(b), § 87(2)(g)

On December 8, 2004, § 87(2)(b) and § 87(2)(b) responded to a 911 call for a jumper. After speaking with § 87(2)(b) and removing his bottle of Heineken, the officers and technicians went upstairs. They followed § 87(2)(b) upstairs to a back bedroom. § 87(2)(b) would not allow the officers or the technicians to speak to § 87(2)(b) who was inside the bedroom. The officers and technicians pleaded with § 87(2)(b) for approximately six to seven minutes before she came out of the bedroom. The technicians took her to the hallway where § 87(2)(b) spoke to her to medically clear her and make sure she was okay. § 87(2)(b) said that she threatened to jump out of the window because § 87(2)(b) refused to let her leave the apartment. § 87(2)(b) was standing in the living room arguing with the officers and § 87(2)(b) who was standing on the threshold of the apartment door. § 87(2)(b) was wrapping up his questions when, § 87(2)(b) lunged towards his girlfriend. PO Keller and PO Cicerello attempted to restrain § 87(2)(b). At no point did any of the officers make physical contact with § 87(2)(b)'s neck. § 87(2)(b) stated that it happened so quickly in a tight area and therefore it was difficult to restrain him. § 87(2)(b) resisted throughout the entire struggle to get him handcuffed. § 87(2)(b) was on top of the stairs and attempted to jump on top of the officers and technicians' backs. § 87(2)(b) grabbed him and told him he was going to get hurt if he jumped. § 87(2)(b) then came from another door with a bat and attempted to strike the officers. § 87(2)(b) saw § 87(2)(b) attempting to reach towards PO Keller's weapon. Additional officers then responded to the scene. At no point did § 87(2)(b) hear any officers threaten to "kill" § 87(2)(b). The officers and technicians called for assistance numerous times throughout the approximately eight minute struggle. PO Keller then handcuffed one of § 87(2)(b)'s wrists when § 87(2)(b) pushed at the officers causing PO Keller to fall feet first down the stairs. § 87(2)(b) lunged at § 87(2)(b) as § 87(2)(b) attempted to restrain § 87(2)(b). At no point did § 87(2)(b) see any officers kick or punch § 87(2)(b).

As PO Keller and § 87(2)(b) were approximately halfway down the stairs, other units responded to the location. The officers assisted with the technicians as other officers assisted in handcuffing § 87(2)(b). § 87(2)(b) never heard any officer threaten to taser § 87(2)(b) and added that the word "taser" was never used during the incident. § 87(2)(b) did see § 87(2)(b) faint on the stairs and stated that he helped pick her up. He never saw any officers throw § 87(2)(b) on the stairs. § 87(2)(b) slid on her buttocks down the stairs. § 87(2)(b) later took her into the bedroom and § 87(2)(b) never exited the apartment again.

When the duty captain arrived, they advised everyone to leave the location. § 87(2)(b) saw § 87(2)(b) outside attempting to gather everyone's names and was screaming and cursing. § 87(2)(b) was not outside at this point. § 87(2)(b) went to the precinct and later transported PO Keller to § 87(2)(b) for injuries to his wrist and shoulders. As they were leaving the precinct, § 87(2)(b) heard § 87(2)(b) screaming and cursing from the holding cell. § 87(2)(b) said that while in the cell § 87(2)(b) was removing his clothes.

#### **Attempts to contact additional witnesses and victims**

Inv. Katz attempted to contact § 87(2)(b) via phone on December 21, 2004, but the number was disconnected. A letter was also sent to her residence on this date, with no response (encl. 41a). Inv. Serrano again attempted to contact § 87(2)(b) via phone on April 4, 2005 and the number was still disconnected. A final letter was sent to her residence on April 18, 2005, with no response (encl. 41c). On April 21, 2005, the undersigned contacted § 87(2)(b). She said that § 87(2)(b) and § 87(2)(b) were no

longer dating and therefore could not provide any contact information for her. A Verizon subpoena was sent on April 23, 2005, for her home telephone number, but was returned with negative results (encl. 42b).

§ 87(2)(b) missed three scheduled appointments on March 31<sup>st</sup>, April 22<sup>nd</sup> and May 6, 2005. On April 26, 2005, Inv. Serrano contacted § 87(2)(b) who said that her attorney advised her not to allow § 87(2)(b) to make a statement. She reiterated that an officer told her son, “Mind your fucking business.”

Based on the prisoner holding pen roster, § 87(2)(b) and § 87(2)(b) were identified as being in the holding cell when § 87(2)(b) was logged in (encl. 32a-c). A subpoena was sent to Verizon to obtain contact information for both individuals on August 3, 2005 (encl. 42f). On August 8, 2005, Verizon responded via fax that there was no working service for § 87(2)(b)'s residence. Verizon did provide a telephone number for § 87(2)(b)'s residence (encl. 42h). A call was placed on August 12, 2005, however the tenant indicated that there was no one by the name of § 87(2)(b) living in that apartment. A letter was therefore not sent to his residence.

### **Officer Interviews**

#### **PO Michael Keller**

*PO Michael Keller was interviewed by the CCRB on May 2, 2005 (encl. 15a-e). On December 8, 2004, he was assigned to patrol within the 73<sup>rd</sup> Precinct. He and his partner, PO Frank Cicerello, were the first police unit to respond to the location.*

On December 8, 2005, PO Keller responded to a call concerning a female who was attempting to jump out of the window at § 87(2)(b) in Brooklyn. PO Keller and PO Cicerello responded to the building as EMTs were arriving. § 87(2)(b) came to the door while holding a can of Budweiser and told the officers that the police were no longer needed. § 87(2)(b) opened the door just enough so that he could speak to the officers. PO Keller asked what was going on, since he saw a female standing three feet behind § 87(2)(b) later identified as § 87(2)(b). § 87(2)(b) appeared to be in good condition and she had no apparent injuries. § 87(2)(b) however, appeared intoxicated based on his behavior. PO Keller also saw that § 87(2)(b) was holding a bottle of beer. § 87(2)(b) told the officers that there was nothing going on while standing in front of them to prevent them from entering the building. § 87(2)(b) said that he got into a fight with his girlfriend, § 87(2)(b) and she wanted to leave the apartment. Since § 87(2)(b) did not allow her to leave, she threatened to jump out of the window prompting § 87(2)(b) to call 911.

PO Keller told § 87(2)(b) that the EMTs needed to speak to § 87(2)(b) and then they could leave. § 87(2)(b) said that he would not allow her to be spoken to and ordered § 87(2)(b) upstairs. PO Keller told § 87(2)(b) that this was a simple aided case and once the technicians speak to § 87(2)(b) everyone could leave. The officers requested that § 87(2)(b) put the beer down, to which he complied. § 87(2)(b) then headed upstairs and the officers followed behind him.

There were eighteen stairs to the second floor. When they got upstairs, PO Keller saw § 87(2)(b) and two other males in the apartment, later identified as § 87(2)(b) and § 87(2)(b) who were standing around. § 87(2)(b) went directly to the bedroom. PO Keller could see § 87(2)(b) sitting on a chair by the window in the bedroom. § 87(2)(b) stood in front of the bedroom, blocking access to the bedroom. PO Keller never went inside the bedroom but he could see § 87(2)(b). PO Keller told § 87(2)(b) to let the EMS talk to § 87(2)(b). After several requests, § 87(2)(b) finally complied, and § 87(2)(b) walked to the hallway where the technicians were waiting. The officers began to walk behind her, when § 87(2)(b) “snapped” and began to charge past PO Keller. PO Keller was unaware if he was going after § 87(2)(b) or at EMS. PO Keller then tackled § 87(2)(b) in the apartment by the door and got one handcuff on him. PO Keller grabbed § 87(2)(b) by the shoulders into a bear hug and brought him down to the floor, at no point making contact with his neck. PO Keller struggled to get him on the floor and handcuffed. The family then began to get involved and PO Keller felt someone jump on his back and another individual grab his weapon. PO Keller, PO Cicerello and § 87(2)(b) were “fighting” at the top of the staircase and he still could not get him in handcuffs. EMS assisted by attempting to keep the family away. Given the situation, PO Keller put over a call for assistance.



Another set of officers, identified as PO Jason Cuttler and PO Shane Killilea, responded and assisted in handcuffing § 87(2)(b). PO Keller and PO Cicerello struggled for approximately three minutes as § 87(2)(b) continued to swing, elbow, and kick the officers to prevent them from grabbing his arms. PO Keller and § 87(2)(b) were still struggling, when PO Keller lost his balance and slid down the stairs. PO Keller had his fingers in one set of handcuffs while grabbing hold of § 87(2)(b) who slid down the stairs with him. Once they hit the bottom of the stairs, PO Keller was able to put the other handcuff on § 87(2)(b). § 87(2)(b) appeared winded from going down the stairs. PO Keller stated that when he was brought to the precinct he was wearing a tank top and boxers. Prior to the incident he was wearing pants which were low under his buttocks and may have come off during the struggle. PO Keller said that after the incident was over, § 87(2)(b) came outside and began ranting and raving and taking down all of the officer's names that were on the scene.

PO Keller went to the precinct and was then transported to § 87(2)(b). PO Cuttler was assigned the arrest since PO Keller injured two fingers and his back. § 87(2)(b)  
§ 87(2)(b) ESU responded to the scene but never assisted since § 87(2)(b) was already under control in handcuffs.

### **PO Frank Cicerello**

*PO Cicerello was interviewed by the CCRB on May 16, 2005 (encl. 19a-d). On December 8, 2004, he was assigned to patrol within the confines of the 73<sup>rd</sup> Precinct with PO Keller. § 87(2)(g)*  
§ 87(2)(b)

After responding to § 87(2)(b)'s call for assistance, the officers and technicians attempted to convince him to allow them to speak to § 87(2)(b). § 87(2)(b) initially refused, but then went upstairs and the officers and technicians followed behind. In the apartment, § 87(2)(b) finally allowed the technicians to speak to § 87(2)(b). § 87(2)(b) went out into the hallway. This seemed to upset § 87(2)(b), who pushed by PO Keller and PO Cicerello and attempted to pull § 87(2)(b) away from the EMTs. § 87(2)(b) was cursing and yelled that he did not want § 87(2)(b) speaking to the EMTs. PO Keller and PO Cicerello followed behind § 87(2)(b) who was now under arrest. PO Keller put one handcuff on § 87(2)(b) who was flailing his arms. PO Keller grabbed one arm while PO Cicerello grabbed the other arm. This struggle occurred on the threshold of the apartment. At no point did they make contact with § 87(2)(b)'s throat. Other family members attempted to pull § 87(2)(b) into the apartment and push the officers away. PO Keller and PO Cicerello pulled § 87(2)(b) in the hallway. EMS assisted by blocking the family members from interfering. PO Keller radioed for assistance and PO Cuttler and PO Killilea were the first to respond. The officers assisted as the struggle continued. PO Keller then lost his balance and fell down the stairs with § 87(2)(b). PO Cicerello fell down just two stairs and then ran down towards § 87(2)(b) on the landing and assisted in placing the other handcuff on him.

PO Cicerello transported PO Keller to the hospital. PO Cicerello said that he did not see any other family members at the precinct but was aware that they were intent on filing a complaint. PO Cicerello denied that a threat was made to kill or taser § 87(2)(b). PO Cicerello did see § 87(2)(b) slide down the stairs on her rear end. Neither PO Keller nor PO Cicerello had their flashlights out throughout the incident. At no point did PO Cicerello see family members jumping on PO Keller's back. Additionally, he never saw them attempt to reach for his weapon.

### **PO Jason Cuttler**

PO Jason Cuttler prepared the **omniform system of complaints** report (encl. 16a-b). The report indicates that officers responded to investigate an aided. § 87(2)(b) said that he and § 87(2)(b) were fighting but everything was all right. § 87(2)(b) had locked § 87(2)(b) in the bedroom and refused to allow her to leave. As officers and technicians attempted to investigate further, § 87(2)(b) charged at officers. Officers attempted to restrain him as he flailed his arm. An officer and § 87(2)(b) fell down the stairs causing physical injury to the officer's hand and back. § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

*PO Cuttler was interviewed by the CCRB on May 2, 2005 (encl. 18a-e). On December 8, 2004, PO Cuttler worked a tour of 11:15pm by 7:50am. He was assigned to sector JMP in the 73<sup>rd</sup> Precinct with PO Shane Killilea in patrol car #4438. He provided the following statement.*

On December 8, 2004, PO Cuttler responded to a call for assistance from sector K. When he and his partner arrived, PO Cuttler saw PO Keller and PO Cicerello struggling with § 87(2)(b) at the top of the stairs. Both PO Cuttler and PO Killilea ran up the stairs and assisted. PO Keller and PO Cicerello were attempting to place § 87(2)(b) in handcuffs. One handcuff was already on but they were having difficulty due to the narrow stairwell and the struggle to place § 87(2)(b)'s arms behind him. § 87(2)(b) was holding his arms against his chest making it difficult for him to be handcuffed. There were people in the apartment and EMTs in the hallway who were preventing the family from interfering.

Approximately thirty seconds to a minute after their arrival, PO Keller and § 87(2)(b) fell down the stairs. PO Keller was holding on to § 87(2)(b)'s cuffed hand. When they got to the bottom of the stairs, PO Keller was able to place him in handcuffs. PO Cicerello followed after and assisted PO Keller. By the time PO Cuttler and PO Killilea went down the stairs, § 87(2)(b) was already handcuffed. All four officers walked § 87(2)(b) to the patrol car. Additional officers responded but the situation was already under control.

PO Cuttler escorted § 87(2)(b) to the precinct. Inside the patrol car he threatened the officers by saying that he would "call them back and ambush them." He also said that he owns a rifle and he would make a fake call to police and shoot at them as they drive by. PO Cuttler was letting him speak and did not entertain him. § 87(2)(b) never made any complaints about injuries or stated that he was placed in a chokehold. Once at the precinct, PO Cuttler brought § 87(2)(b) into the station house. § 87(2)(b) continued to act irrationally and it was unclear as to what he was saying. The desk sergeant, Sgt. Nemesio Vera, told officers in the precinct to transport him to § 87(2)(b) for evaluation. The officers had to wait a few minutes for EMS to arrive at the stationhouse since the original technicians could not take him. § 87(2)(b) was placed in leg shackles and remained in front of the desk throughout the entire time. PO Cuttler had full custody of § 87(2)(b) until he was escorted to the hospital. § 87(2)(b) did not appear to have sustained any injuries.

§ 87(2)(b) appeared intoxicated due to his behavior, watery eyes and the odor of alcohol. PO Cuttler stated that when § 87(2)(b) was brought to the stationhouse, he was wearing a tank top and boxer shorts. PO Cuttler stated that he never threatened to kill § 87(2)(b). PO Cuttler saw § 87(2)(b) faint when she came down the stairs.

#### **PO Shane Killilea**

*PO Killilea was interviewed by the CCRB on May 16, 2005 (encl. 20a-c). On December 8, 2004, PO Killilea was working in sector JMP within the confines of the 73<sup>rd</sup> Precinct in patrol car #4438. He was assigned with PO Cuttler. § 87(2)(g)*

On December 8, 2004, at approximately 8:10am, PO Killilea relieved PO Cicerello from his duties of guarding § 87(2)(b) at § 87(2)(b). PO Killilea never saw § 87(2)(b) in the holding cells. PO Killilea was told later on that the family members came to the precinct and filed complaints. PO Killilea never saw any injuries on § 87(2)(b) but did hear him complain that his ribs were hurting. PO Killilea said that § 87(2)(b) was fairly quiet while in the patrol car. He could not recall any specific statements made by § 87(2)(b). PO Killilea heard that back in the precinct § 87(2)(b) was using profanity but did not recall § 87(2)(b) making any statements about what occurred. § 87(2)(b) never told PO Killilea that he was grabbed by his throat nor how he suffered injuries to his ribs.

#### **ESU Report**

Det. Schierenbeck prepared an **ESU report** for the response to § 87(2)(b) (encl. 21a). The report indicated that he responded to a call for assistance. Upon arrival, an intoxicated male assaulted an officer and was in custody. There were no EDPs on the scene and no service was provided by ESU. The officer, PO Keller, was removed to § 87(2)(b).

Det. Schierenbeck prepared another ESU report in regards to the 73<sup>rd</sup> Precinct station house (encl. 21b). He indicated that the crew responded to the location for a violent prisoner inside the holding cells. A mesh EDP blanket was used to remove the prisoner from the scene. EMS removed the prisoner to § 87(2)(b) with precinct personnel. There were no injuries to the prisoner or the officers.

#### **Det. Robert Schierenbeck**

*Det. Schierenbeck was interviewed by the CCRB on June 10, 2005 (encl. 22a-b). On December 8, 2004 he stated that he was initially not assigned to duty but worked a slippage tour from 11:30pm to 8:05am. He worked in ESU truck B7, patrol car 5547 in full uniform.*

On December 8, 2004, he responded to a call for assistance (emergency) at § 87(2)(b) in Brooklyn. When they arrived they were informed that they already had an individual in custody. ESU never made entry into the building. There was an irate female on the scene, either § 87(2)(b) or § 87(2)(b), walking around the scene and jotting down officers' names and shield numbers. The female walked up to Det. Schierenbeck's partner, Det. Jack Herzlinger, and he provided his name and shield number. The female was irate and yelled profanities at all of the officers on the scene. Det. Schierenbeck and Det. Herzlinger then left the scene. When presented with an arrest photo of § 87(2)(b) he stated that he did not recall seeing him at all. Det. Schierenbeck remained on the scene for approximately five minutes. He stated that once all of the officers began to leave, and he was informed that § 87(2)(b) was in custody and being removed to the hospital, they left the scene. Det. Schierenbeck and Det. Herzlinger went back to headquarters, which is located at 1000 Sutter Avenue in Brooklyn.

At approximately 4:45am, Det. Schierenbeck received a call to respond to an EDP in the cells at the 73<sup>rd</sup> Precinct. Det. Schierenbeck referred to his paperwork and stated that he has responded to so many calls of EDP's in the cells that he could not remember the details of the incident. He did read from his paperwork that responded to a call of a violent person. Det. Schierenbeck stated that he did not recall hearing any profanity used at the precinct. He stated that the purpose of ESU is to restrain the violent EDP so that he does not hurt himself or officers as he is being transported. Velcro straps are used for their ankles and a mesh EDP blanket is used to wrap the individual. The individual is then placed on a stretcher and transported to the hospital. In this incident, the individual, later identified as § 87(2)(b) was removed from the cells using a mesh netting and transported by EMS to § 87(2)(b). Det. Schierenbeck believed that only he and his partner entered the cells. Det. Schierenbeck does not deny that force was used to bring the individual to the ground and restrain him. Det. Schierenbeck recalled two other units that responded, however § 87(2)(b) was in the mesh netting before this unit arrived. Det. Schierenbeck had no other independent recollection of the incident.

#### **PO Arnold Nickey and PO Orlando Lamourt**

*PO Nickey was interviewed by the CCRB on August 15, 2005 (encl. 24a-b). PO Nickey is a black male, approximately five feet ten inches and 200 pounds. PO Nickey was identified as the cell attendant of the 73<sup>rd</sup> Precinct on December 8, 2004 via the roll call. PO Nickey began his tour at 11:50pm on December 7, 2004 and worked until 7:50am on December 8, 2004.*

*PO Lamourt was interviewed by the CCRB on August 8, 2005 (encl. 23a-b). PO Lamourt is a Hispanic male, approximately five feet six inches tall and 196 pounds. PO Lamourt was identified as the cell attendant on December 8, 2004, and started his tour at 3:00pm.*

Both cell attendants could not recall any details of this incident. PO Nickey stated that § 87(2)(b) looks vaguely familiar but could not recall any specifics about the date in question. PO Nickey and PO Lamourt explained that their duties consist of monitoring the cells, assisting with arrests and escorting prisoners to the restroom when needed. Neither officer observed any strip-searches conducted in the holding cell and stated that it would not be procedure to strip-search prisoners in the cells.

#### **Medical Documents**

The ambulance call report indicates that § 87(2)(b) was removed from the 73<sup>rd</sup> Precinct to § 87(2)(b) (encl. 25). His chief complaint was that he was "drinking liquor." It was noted that § 87(2)(b) was intoxicated, hostile and belligerent. He refused to provide information and refused any

treatment. § 87(2)(b) was placed in an EDP bag and became more upset during the transport to the hospital.

§ 87(2)(b) was treated at § 87(2)(b) on § 87(2)(b) (encl. 26a-d). § 87(2)(b) received minor abrasions. The medical report indicates that § 87(2)(b) suffered contusions and abrasion on his right external ribs. It was noted that § 87(2)(b) was intoxicated.

PO Keller was treated at § 87(2)(b) on December 8, 2004 (encl. 27a-c). He suffered from lower back pain. § 87(2)(b)

### Police Documents

The **sprint** indicated that at 3:43am there was a call for an ambulance to respond to a female attempting to jump out of the window at § 87(2)(b) (encl. 29a-c). An anonymous male caller contacted 911. A sector car and an ambulance responded to the scene at 3:44am. A call was placed for ESU at 3:54am and they responded at 4:03am. An arrest was reported at 4:21am. At 4:36am a sergeant radioed that there was no EDP at the location. He reported that there were minor injuries and officers from sector K were headed to § 87(2)(b) in regards. The **arrest photo** does not show any physical injuries to § 87(2)(b)'s face (encl. 31). The **command log** indicated that PO Cuttler was assigned the arrest (encl. 33a-g). No notation is documented that § 87(2)(b) was strip-searched. He was returned to the precinct from § 87(2)(b) at § 87(2)(b). § 87(2)(b) came to the precinct at 5:05am to file a CCRB complaint report. The **roll call** indicates that PO Nickey was assigned as the cell attendant on December 7, 2004 at 11:50pm until December 8, 2004 at 7:50am (encl. 34a-o). The **prisoner holding pen roster** indicates that PO Lamourt was also assigned as the cell attendant on December 8, 2004 (encl. 32a-c).

### Civilian and Officer CCRB History

This is the first complaint filed by § 87(2)(b), § 87(2)(b) and § 87(2)(b) with the CCRB (encl. 8). PO Keller has no substantiated allegations during his eleven-year tenure with the NYPD (encl. 4). Neither PO Cicerello nor PO Cuttler have any substantiated allegations during their four-year tenure with the NYPD (encl. 5 and 6). PO Killilea has two prior CCRB allegations that were substantiated for retaliatory summonses (encl. 7). The Board recommended charges. There was no NYPD disposition available.

### Criminal Record of Convictions

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Conclusions and Recommendations

#### Officer Identification

All officers were identified by the civilian complaint report. None of the officers dispute their presence on the scene. The allegations of physical force are pleaded against PO Keller, PO Cicerello, PO Cutler and PO Killilea respectively since they were the initial units to respond. § 87(2)(b) stated that only the officers who responded initially used force. All four officers acknowledge that force was used.

§ 87(2)(b), § 87(2)(g)

It is **undisputed** that officers and two technicians responded to a 911 call at § 87(2)(b) in Brooklyn in response to a jumper. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED] According to Kamins' New York Search and Seizure (encl. I), under the emergency doctrine, officers can "enter a premises without a warrant to protect individuals in distress, to assist victims of crimes that have just occurred, or to investigate suspicious signs of impending danger." § 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation A: Force: At** § 87(2)(b), **PO Michael Keller used physical force against** § 87(2)(b).

**Allegation B: Force: At** § 87(2)(b), **PO Frank Cicerello used physical force against** § 87(2)(b).

**Allegation C: Force: At** § 87(2)(b), **PO Jason Cuttler used physical force against** § 87(2)(b).

**Allegation D: Force: At** § 87(2)(b), **PO Shane Killilea used physical force against** § 87(2)(b).

It was determined that physical force was used to effect the arrest of § 87(2)(b) § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

According to Patrol Guide Procedure 203-11, it establishes that officers are allowed to use the "minimal force necessary to affect an arrest." Police Department v. Carlton, OATH Index No. 869/00 March 8, 2000 (encl. 2a-c), also establishes that reasonable force is permitted during the course of making an arrest. § 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation E: Abuse of Authority:** At § 87(2)(b), an officer threatened § 87(2)(b) with the use of force.

Both § 87(2)(b) and § 87(2)(b) alleged that as the officers allegedly beat him, he heard an officer threaten to kill § 87(2)(b). § 87(2)(b), § 87(2)(g)

**Allegation F: Force:** At § 87(2)(b), an officer used physical force against § 87(2)(b). § 87(2)(b) alleged that after she fainted, an officer picked her up by her hands and then threw her back onto the staircase. PO Keller and both technicians did recall that § 87(2)(b) fainted and slid down the stairs on her buttocks, but denied throwing her onto the stairs. By her own admission, § 87(2)(b) stated that the third time she fainted on the stairs, she fell on top of § 87(2)(b). At this point § 87(2)(b) was in the process of being arrested. § 87(2)(b), § 87(2)(g)

According to Penal Law 195.05 (encl. 3), it establishes that “a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function by means of physical force or interference.”

§ 87(2)(b), § 87(2)(g)

**Allegation G: Discourtesy:** In front of § 87(2)(b), an officer spoke obscenely and/or rudely to § 87(2)(b).

§ 87(2)(b) stated that as she and her son § 87(2)(b) were outside, § 87(2)(b) questioned officers about where they were taking § 87(2)(b). She alleged that an officer responded to § 87(2)(b) by saying, “Mind your fucking business.” § 87(2)(b) described this officer as a short white male.

§ 87(2)(b), § 87(2)(g)

**Allegation H: Discourtesy:** At the 73<sup>rd</sup> Precinct, an officer spoke obscenely and/or rudely to § 87(2)(b). § 87(2)(b).

§ 87(2)(b) alleged that while in the holding cell, an officer entered with mesh netting and told him, “This is for you, bitch.” Based on the description that § 87(2)(b) provided of the restraining device used, the only unit that would have this type of weapon would be an ESU officer. § 87(2)(b), § 87(2)(g)

**Allegation I: Force:** At the 73<sup>rd</sup> Precinct, officers used physical force against § 87(2)(b).

§ 87(2)(b) alleged that officers entered his holding cell, and tossed him to the floor face first. Det. Schrienbeck does not dispute that physical force was used to restrain § 87(2)(b) in the holding cell. His paperwork indicates that Velcro straps and netting were used to restrain and control § 87(2)(b) and remove him to the hospital. According to Patrol Guide Procedure 203-11 (encl. 1a-b), “when a person is taken into custody...alternate restraining devices (Velcro straps, mesh restraining blankets) shall be used, at the earliest opportunity to restrain or further restrain a subject whose actions or behavior may cause injury to himself/herself or others.” Prior to being placed in the holding cell, § 87(2)(b) struggled with four officers causing PO Keller to sustain an injury. § 87(2)(b), § 87(2)(g)

**Allegation J: Abuse of Authority:** At the 73<sup>rd</sup> Precinct, an officer strip-searched § 87(2)(b).

§ 87(2)(b) alleged that after returning from the hospital he was strip-searched in the holding cell. § 87(2)(b) described the officer as a white stocky male in uniform and stated that he was not at the apartment earlier. § 87(2)(b), § 87(2)(g). He could not provide any descriptive information to identify the alleged subject officer of this allegation. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: